

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to timely and adequate notice and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 14, “Offset of County Debts Owed Department”; to adopt new Chapter 16, “Notices”; and to amend Chapter 40, “Application for Aid,” Chapter 41, “Granting Assistance,” Chapter 46, “Overpayment Recovery,” Chapter 74, “Iowa Health and Wellness Plan,” Chapter 75, “Conditions of Eligibility,” Chapter 76, “Enrollment and Reenrollment,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Chapter 82, “Intermediate Care Facilities for Persons with an Intellectual Disability,” Chapter 83, “Medicaid Waiver Services,” Chapter 86, “Healthy and Well Kids in Iowa (HAWK-I) Program,” Chapter 90, “Targeted Case Management,” Chapter 91, “Medicare Drug Subsidy,” Chapter 93, “PROMISE JOBS Program,” Chapter 95, “Collections,” Chapter 106, “Certification Standards for Children’s Residential Facilities,” Chapter 109, “Child Care Centers,” Chapter 153, “Funding for Local Services,” Chapter 170, “Child Care Services,” and Chapter 187, “Aftercare Services Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 217.6.

Purpose and Summary

These amendments propose to implement a new Chapter 16, “Notices,” to centralize administrative rules regarding timely and adequate notices. In addition, these amendments correct cross references found in administrative rules regarding timely and adequate notices. Based on changes in Chapter 7 (see ARC 4674C, IAB 9/25/19), cross references to that chapter are also being corrected.

Whenever the Department proposes to approve or deny an application for assistance or services, the Department must provide adequate notice. Whenever the Department proposes to terminate or reduce assistance or services, the Department must provide timely and adequate notice. Rules regarding timely and adequate notices are currently in Chapter 7, “Appeals and Hearings.” As notices relate to all parts of the Department and are not specific to appeals, the rules regarding timely and adequate notices are being moved from Chapter 7 into Chapter 16, which solely relates to notices.

An individual’s right to due process is not impacted by these changes. The Department is still required to provide timely and adequate notice to applicants and recipients. The rules are simply being moved from one chapter into another.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

These rules do not include waiver provisions because they confer benefits on those affected and are generally required by federal law that does not allow for waivers. Individuals may request a waiver under the Department’s general rule on exceptions at 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 15, 2019. Comments should be directed to:

Nancy Freudenberg
Iowa Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 441—14.5(217,234), introductory paragraph, as follows:

441—14.5(217,234) Implementing the final decision. When the final decision issued pursuant to rule 441—7.16(17A) 441—7.12(17A) upholds the department’s action or modifies the amount of offset, the division of fiscal management shall certify to the department of administrative services that the requirements for offset under Iowa Code section 8A.504 have been met. When the final decision reverses the department’s action, the division of fiscal management shall notify the department of administrative services to release the offset.

ITEM 2. Adopt the following **new** 441—Chapter 16:

CHAPTER 16
NOTICES

PREAMBLE

This chapter applies to any notice of decision or notice of action issued by or on behalf of the department.

441—16.1(17A) Definitions.

“*Adequate notice*” means any notice of decision or notice of action issued in compliance with subrule 16.3(2).

“*Adverse benefit determination*” means any adverse action taken in regard to any individual’s benefits pursuant to an assistance program administered by the department or on the department’s behalf, excluding determinations related to requests for exceptions to policy.

“*Assistance program*” means a program administered by the department or on the department’s behalf through which qualifying individuals receive benefits or services. Assistance programs include, but are not necessarily limited to, food assistance, Medicaid, the family investment program, refugee cash assistance, child care assistance, emergency assistance, the family planning program, the family self-sufficiency grant, PROMISE JOBS, state supplementary assistance, the healthy and well kids in Iowa (HAWK-I) program, foster care, adoption, and aftercare services.

“*Department*” means the Iowa department of human services.

“*Enrollee*” means any applicant for, or recipient of, benefits or services pursuant to an assistance program.

“*Timely*” means that the notice is sent at least ten calendar days before the date the adverse benefit determination would become effective. The timely notice period shall begin on the day after the notice is sent.

441—16.2(17A) Governing laws and regulations. Notwithstanding the rules contained in this chapter, to the extent that state or federal law (including regulations and rules) related to a specific program is more specific than or contradicts these rules, the program-specific state or federal law shall control.

441—16.3(17A) Notices.

16.3(1) *Timely notice.* For individuals applying for, or receiving, benefits pursuant to an assistance program, the department will provide timely, written notice of the right to appeal any adverse benefit determinations affecting the individual’s benefits or eligibility, when required to do so under state or federal law.

The department will also provide timely, written notice of pending actions for a state or federal tax or debtor offset.

Timely notice must also be adequate as provided in subrule 16.3(2).

16.3(2) *Adequate notice.* To the extent standards provided elsewhere in state or federal law are inapplicable, adequate notice shall include:

- a. A description of the action taken;
- b. The effective date of the action;
- c. The specific reasons supporting the action, stated in clear language likely to be understood by the average program applicant or enrollee;
- d. References to applicable provisions of law supporting the action;
- e. An explanation of the right to appeal; and
- f. The circumstances under which assistance is continued when an appeal is filed.

16.3(3) *Dispensing with timely notice.* Timely notice may be dispensed with, but adequate notice shall be sent no later than the date benefits would have been issued, when:

- a. There is factual information confirming the death of the enrollee or of the family investment program payee and there is no relative available to serve as a new payee.
- b. The enrollee provides a clear written, signed statement that the enrollee no longer wishes to receive assistance, or gives information which requires termination or reduction of assistance, and the enrollee has indicated, in writing, that the enrollee understands that the consequence of supplying the information is termination or reduction of assistance.
- c. The enrollee has been admitted or committed to an institution that does not qualify for payment under an assistance program.
- d. The enrollee has been placed in skilled nursing care, intermediate care, or long-term hospitalization.
- e. The whereabouts of the enrollee are unknown and mail directed to the enrollee has been returned by the post office indicating no known forwarding address. When the whereabouts of the enrollee become

known during the payment period covered by the returned warrant, the warrant shall be made available to the enrollee.

- f.* The department establishes that the enrollee has been accepted for assistance in another state.
- g.* Cash assistance or food assistance is changed because a child is removed from the home as a result of a judicial determination or is voluntarily placed in foster care.
- h.* A change in the level of medical care is prescribed by the enrollee's physician.
- i.* A special allowance or service granted for a specific period is terminated and the enrollee has been informed in writing at the time of initiation that the allowance or service shall terminate at the end of the specified period.
- j.* The notice involves an adverse determination made with regard to the preadmission screening requirements.
- k.* The department terminates or reduces benefits or makes changes based on a completed Form 470-2881, 470-2881(S), 470-2881(M), or 470-2881(MS), Review/Recertification Eligibility Document, as described at 441—subrule 40.27(3) or rule 441—75.52(249A).
- l.* The department terminates benefits for failure to return a completed report form, as described in paragraph 16.3(3)“*k.*”
- m.* The department approves or denies an application for assistance.
- n.* The department implements a mass change based on law or rule changes that affect a group of enrollees.

These rules are intended to implement Iowa Code chapter 17A.

ITEM 3. Amend paragraph **40.27(5)“b”** as follows:

- b.* When cancellation of assistance occurs later because issuance of a timely notice, as required by 441—7.7(17A) rule 441—16.3(17A), requires that the action be delayed until the first day of the second calendar month, any overpayment received in the first calendar month shall be recouped.

ITEM 4. Amend subparagraph **40.27(5)“c”(2)** as follows:

- (2) Recoupment shall be made for any overpayment, with one exception. When a change in income is timely reported by a recipient and timely acted upon by the department, but the timely notice, as required by 441—7.7(17A) rule 441—16.3(17A), requires the action be delayed until the second calendar month following the month of change, and eligibility continues, recoupment shall not be made.

ITEM 5. Amend subrule 41.24(8) as follows:

41.24(8) ~~The limited~~ *Limited benefit plan (LBP)*. When a participant responsible for signing and meeting the terms of a family investment agreement as described at rule 441—93.4(239B) chooses not to sign or fulfill the terms of the agreement, the FIP assistance unit or the individual participant shall enter into a limited benefit plan. A limited benefit plan is considered imposed as of the date that a timely and adequate notice is issued to the participant as defined at 441—subrule 7.7(1) rule 441—16.3(17A). Once the limited benefit plan is imposed, FIP eligibility no longer exists as of the first of the month after the month in which timely and adequate notice is given to the participant. Upon the issuance of the notice to impose a limited benefit plan, the person who chose the limited benefit plan can reconsider and end the limited benefit plan, but only as described at paragraphs 41.24(8)“*d*” and “*e*.”

- a.* to *g.* No change.

ITEM 6. Amend subparagraph **41.27(9)“c”(2)** as follows:

(2) Nonrecurring lump-sum income. Moneys received as a nonrecurring lump sum, except as specified in subrules 41.26(4), and 41.26(7), and paragraphs 41.27(8)“*b*,” and 41.27(8)“*c*,” shall be treated in accordance with this rule. Nonrecurring lump-sum income shall be considered as income in the month received and counted in computing eligibility and the amount of the grant, unless the income is exempt. Nonrecurring lump-sum unearned income is defined as a payment in the nature of a windfall, for example, an inheritance, an insurance settlement for pain and suffering, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits, such as social security, job insurance or workers' compensation. When countable income, exclusive of the family investment program grant but including countable lump-sum income, exceeds the needs of the eligible group, the case shall be

canceled or the application rejected. In addition, the eligible group shall be ineligible for the number of full months derived by dividing the income by the standard of need for the eligible group. Any income remaining after this calculation shall be applied as income to the first month following the period of ineligibility and disregarded as income thereafter. The period of ineligibility shall begin with the month the lump sum is received.

When a nonrecurring lump sum is timely reported as required by 441—paragraph 40.27(4) “f,” recoupment shall not be made for the month of receipt. When a nonrecurring lump sum is timely reported, but the timely notice as required by ~~rule 441—7.7(17A)~~ 441—subrule 16.3(1) requires that the action be delayed until the second calendar month following the month of change, recoupment shall not be made for the first calendar month following the month of change. When a nonrecurring lump sum is not timely reported, recoupment shall be made beginning with the month of receipt.

The period of ineligibility shall be shortened when the schedule of living costs as defined in 41.28(2) increases.

The period of ineligibility shall be shortened by the amount that is no longer available to the eligible group due to a loss or a theft or because the person controlling the lump sum no longer resides with the eligible group.

The period of ineligibility shall also be shortened when there is an expenditure of the lump sum made for the following circumstances unless there was insurance available to meet the expense: Payments made on medical services for the former eligible group or their dependents for services listed in 441—Chapters 78, 81, 82 and 85 at the time the expense is reported to the department; the cost of necessary repairs to maintain habitability of the homestead requiring the spending of over \$25 per incident; cost of replacement of exempt resources as defined in subrule 41.26(1) due to fire, tornado, or other natural disaster; or funeral and burial expenses. The expenditure of these funds shall be verified. A dependent is an individual who is claimed or could be claimed by another individual as a dependent for federal income tax purposes.

When countable income, including the lump-sum income, is less than the needs of the eligible group, the lump sum shall be counted as income for the month received. For purposes of applying the lump-sum provision, the eligible group is defined as all eligible persons and any other individual whose lump-sum income is counted in determining the period of ineligibility. During the period of ineligibility, individuals not in the eligible group when the lump-sum income was received may be eligible for the family investment program as a separate eligible group. Income of this eligible group plus income, excluding the lump-sum income already considered, of the parent or other legally responsible person in the home shall be considered as available in determining eligibility and the amount of the grant.

ITEM 7. Amend rule 441—46.23(239B) as follows:

441—46.23(239B) Notification and appeals. All clients shall be notified by the department of inspections and appeals, as described at ~~441—subrule 7.5(6), 441—paragraph 7.4(3) “i,”~~ when it is determined that an overpayment exists. Notification shall include the amount, date and reason for the overpayment. The department shall provide additional information regarding the computation of the overpayment upon the client’s request. The client may appeal the computation of the overpayment and any action to recover the overpayment through benefit reduction in accordance with ~~441—subrule 7.5(6), 441—paragraph 7.4(3) “i.”~~

ITEM 8. Amend paragraph **74.6(3)“a”** as follows:

a. Timely notice of adverse action is required as specified in ~~441—subrule 7.7(1)~~ 441—subrule 16.3(1); or

ITEM 9. Amend paragraph **75.21(12)“b”** as follows:

b. The department shall provide timely and adequate notice as defined in ~~441—subrule 7.7(1)~~ rule 441—16.3(17A) to inform the household of a decision to discontinue payment of the health insurance premium because:

(1) and (2) No change.

ITEM 10. Amend subrule 75.22(9) as follows:

75.22(9) Notices.

a. An adequate notice as defined in ~~441—subrule 7.7(1)~~ 441—subrule 16.3(2) shall be provided under the following circumstances:

(1) to (5) No change.

b. A timely and adequate notice as defined in ~~441—subrule 7.7(1)~~ rule 441—16.3(17A) shall be provided to the recipient informing the recipient of a decision to discontinue payment of the health insurance premium when the recipient no longer meets the eligibility requirements of the program or fails to cooperate in providing information to establish eligibility.

ITEM 11. Amend subrule 75.52(5) as follows:

75.52(5) Effective date. After assistance has been approved, eligibility for continuing assistance shall be effective as of the first of each month. Any change affecting eligibility reported during a month shall be effective the first day of the next calendar month, subject to timely notice requirements at rule ~~441—7.6(217)~~ 441—16.3(17A) for any adverse actions.

a. When the change creates ineligibility, eligibility under the current coverage group shall be canceled and an automatic redetermination of eligibility shall be completed in accordance with rule ~~441—76.11(249A)~~.

b. Rescinded IAB 10/4/00, effective 10/1/00.

c. When an individual included in the eligible group becomes ineligible, that individual's Medicaid shall be canceled effective the first of the next month unless the action must be delayed due to timely notice requirements at rule ~~441—7.6(217)~~ 441—16.3(17A).

ITEM 12. Amend subrule 76.16(1) as follows:

76.16(1) After assistance has been approved, except as provided in subrule 76.13(1), action based on a change reported during a month shall be effective the first day of the next calendar month unless timely notice of adverse action is required as specified in ~~441—subrule 7.7(1)~~ 441—subrule 16.3(1).

ITEM 13. Amend paragraph **79.2(7)“a”** as follows:

a. Any order of sanction shall be in writing and include the name of the person subject to sanction, identify the ground for the sanction and its effective date, and be sent to the person's last-known address. If the department sanctions a provider, the order of sanction shall also include the national provider identification number of the provider and be sent to the provider's last address on file within the medical assistance program. Proof of mailing to such address shall be conclusive evidence of proper service of the sanction upon the provider. ~~The department of inspections and appeals is not required to comply with the additional notification provisions of 441—paragraph 7.10(7)“c” for appeals certified for hearing under this chapter.~~

ITEM 14. Amend subrule 79.8(9) as follows:

79.8(9) The Iowa Medicaid enterprise shall issue a notice of decision to the recipient upon a denial of request for prior approval pursuant to ~~441—Chapter 7~~ 441—Chapter 16. The Iowa Medicaid enterprise shall mail the notice of decision to the recipient within five working days of the date the prior approval form is returned to the provider.

ITEM 15. Amend subrule 82.7(4) as follows:

82.7(4) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with ~~441—Chapter 7~~ and rule 441—16.3(17A).

ITEM 16. Amend rule ~~441—83.9(249A)~~ as follows:

441—83.9(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with ~~441—Chapter 7~~, rule 441—16.3(17A) and rule ~~441—130.5(234)~~. The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or recipient may file an appeal with the department.

ITEM 17. Amend rule 441—83.29(249A) as follows:

441—83.29(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 18. Amend rule 441—83.49(249A) as follows:

441—83.49(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 19. Amend rule 441—83.69(249A) as follows:

441—83.69(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 20. Amend rule 441—83.89(249A) as follows:

441—83.89(249A) Appeal rights. Notice of adverse actions action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 21. Amend rule 441—83.109(249A), introductory paragraph, as follows:

441—83.109(249A) Appeal rights. Notice of adverse actions action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 22. Amend rule 441—83.129(249A) as follows:

441—83.129(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 23. Amend rule 441—86.11(514I) as follows:

441—86.11(514I) Notice requirements. The applicant shall be provided an adequate written notice of the decision regarding the applicant's eligibility for the HAWK-I program. The enrollee shall be notified in writing of any decision that adversely affects the enrollee's eligibility or the amount of benefits. The notice shall be timely and adequate as provided in 441—~~subrule 7.7(1)~~ rule 441—16.3(17A).

ITEM 24. Amend subrule 90.4(2) as follows:

90.4(2) Application decision. The provider shall inform the applicant or the applicant's legally authorized representative of any decision to approve, deny, or delay the service in accordance with notification requirements at 441—~~subrule 7.7(1)~~ rule 441—16.3(17A).

ITEM 25. Amend subrule 90.6(2) as follows:

90.6(2) The provider shall notify the member or the member's legally authorized representative in writing of the termination of targeted case management, in accordance with 441—~~subrule 7.7(1)~~ 441—subrule 16.3(1).

ITEM 26. Amend subrule 91.4(2) as follows:

91.4(2) The department shall give a recipient timely and adequate written notice as provided in 441—~~subrule 7.7(1)~~ rule 441—16.3(17A) when any decision or action is taken that adversely affects subsidy eligibility or the level of subsidy.

ITEM 27. Amend subrule 91.4(3) as follows:

91.4(3) In the circumstances described in 441—~~subrule 7.7(2)~~ 441—subrule 16.3(3), the department may dispense with timely notice but shall send adequate notice no later than the effective date of action.

ITEM 28. Amend paragraph **93.10(1)“b”** as follows:

b. Notice of decision. PROMISE JOBS shall send written notice to each participant in accordance with 441—~~Chapter 7~~ 441—Chapter 16 when services are approved, rejected, renewed, changed,

canceled, or terminated for failure to cooperate or participate. PROMISE JOBS services are approved when the participant is assigned to begin participation in an activity as written in the FIA.

ITEM 29. Amend subrule 93.12(2) as follows:

93.12(2) The department of inspections and appeals shall notify the participant or the provider when it is determined that an overpayment exists, as described at ~~441—subrule 7.5(6)~~. 441—paragraph 7.4(3) “i.”

a. Notification shall include the amount, date, and reason for the overpayment. Upon the participant’s request, the local office shall provide additional information regarding the computation of the overpayment.

b. The participant may appeal the computation of the overpayment and any action to recover the overpayment through benefit reduction in accordance with ~~441—subrule 7.5(6)~~. 441—paragraph 7.4(3) “i.” If a participant or provider files an appeal request, the PROMISE JOBS unit shall notify the DIA within three working days of receipt of the appeal request.

ITEM 30. Amend subrule 95.13(3) as follows:

95.13(3) *Initiation of appeal.* If the department denies some or all support payments that are claimed based on the date of collection, the obligee may initiate an administrative appeal.

a. To initiate an administrative appeal, the obligee shall, within 30 days of the date that a written decision as required by subrule 95.13(2) is issued, make a written request to the child support recovery unit indicating an intent to appeal.

~~*b.* The time limit for initiating an administrative appeal shall be governed by 441—subrule 7.5(4). The time limit provided in 441—subrule 7.5(4) shall start with the date that a written decision as required by subrule 95.13(2) is issued.~~

e. b. If no written decision has been issued after 30 days, the obligee may appeal the failure to issue a written decision. The appeal may be initiated at any time after 30 days and before a written decision is issued.

ITEM 31. Amend subrule 106.5(7) as follows:

106.5(7) Right to appeal suspension or revocation. The holder of the certificate of approval has the right to appeal a suspension or revocation of the certificate of approval, but initiation of an appeal does not alter the suspension or revocation. Notices of adverse actions and the right to appeal shall be given to applicants and certificate of approval holders in accordance with 441—Chapter 7 and rule 441—16.3(17A).

ITEM 32. Amend paragraph **109.2(6)“a”** as follows:

a. Notice of adverse actions for a denial, revocation, or suspension and the right to appeal the licensing decision shall be given to applicants and licensees in accordance with 441—Chapter 7 and rule 441—16.3(17A).

ITEM 33. Amend paragraph **153.57(2)“b”** as follows:

b. The department shall notify the member and the CPC when a member is to be disenrolled. The department shall give the member at least ten days’ notice of disenrollment pursuant to rule ~~441—7.7(17A)~~ 441—subrule 16.3(1). The department shall give a member receiving any residential service 30 days’ notice of disenrollment from the program consistent with department of inspections and appeals’ rule ~~481—57.36(135C)~~ 481—57.14(135C).

ITEM 34. Amend subrule 153.58(1) as follows:

153.58(1) Decisions regarding denial or termination of state payment program eligibility, including disenrollment, may be appealed to the department pursuant to 441—Chapter 7. Continuation of assistance will be granted pursuant to rule ~~441—7.9(17A)~~ 441—7.17(17A).

ITEM 35. Amend subrule 170.9(1) as follows:

170.9(1) *Notification and appeals.* All clients or providers shall be notified as described at subrule 170.9(6), when it is determined that an overpayment exists. Notification shall include the amount, date and reason for the overpayment. The department shall provide additional information regarding the

computation of the overpayment upon the client's or provider's request. The client or provider may appeal the computation of the overpayment and any action to recover the overpayment in accordance with ~~441—subrule 7.5(9)~~. 441—paragraph 7.4(3) “i.”

ITEM 36. Amend subparagraph **187.3(6)“c”(9)** as follows:

(9) Recoupment shall not be made when a youth timely reports a change in income and the change is timely acted upon, but the timely notice policy in rule ~~441—7.7(17A)~~ 441—16.3(17A) requires that the action be delayed until the second calendar month following the month of change.